IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1345 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TARABEN WIDOW OF BANSILAL MAGANLAL

Versus

GULAMHUSSAIN RAJABALI LOKHANDWALA

Appearance:

MR KV SHELAT for Petitioners

SERVED BY AFFIX.(N) for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/02/2000

ORAL JUDGEMENT

1. The present Revision Application has been filed by the petitioner - tenant invoking Section 29(2) of the Bombay Rent Act. The details of the litigation are as under :-

2. The respondents - plaintiffs are the owner of the suit premises, which is let to the petitioner tenant. The landlords filed a Civil Suit being suit bearing Rent Suit No. 803/76 against the defendants on the ground that the plaintiffs are the owner of the house No. S.3/595/8 situated at Gendi Gate Road, Vadodara. That the defendants are tenants of two rooms at the rate of Rs. 10/- p.m. and they are in arrears of rent from 1.5.1971 to 30.6.1976. A demand notice was served on the tenants as required under Section 12(2) of the Bombay Rent Act. Still the defendants did not comply with the same and therefore, the aforesaid suit was filed by the plaintiff for getting the decree for possession as well as arrears of rent on the ground of non payment of rent.

2. The defendants have appeared in the suit and filed their written statement at Ex. 10 and contended that Rs. 10/- p.m. is excessive rent and that standard rent should be fixed at Rs. 2/- p.m. It was also contended in the written statement that the tenant had carried out certain repairs to the extend of Rs. 450/and the same was carried out with the consent of the plaintiffs - landlords. According to the defendant, the said arrears of rent was adjusted towards the cost incurred by the defendant and if that amount is adjusted, no amount is due to the plaintiff.

4. The learned Trial Judge has framed the issues at Ex. 14 and after relying upon the evidence, by his judgement and decree dated 5.1.1980 has decreed the suit of the plaintiffs for possession. The trial Court has also passed a decree of arrears of rent in favour of the plaintiffs for Rs. 360/-. The trial Court has also fixed the standard rent of the suit premises at Rs. 10/- p.m.

5. Being dissatisfied with the aforesaid decree of the trial Court, the petitioner-tenant herein has preferred an appeal being Civil Appeal No. 104/80 before the District Court at Vadodara. The said appeal was heard by the learned Joint Judge, Vadodara, who by his judgement and order dated 5.12.1981, dismissed the said appeal and granted time to the defendant to vacate the suit premises till 31.12.1982. The aforesaid judgement of the learned Appellate Judge is challenged in the present Revision Application which is filed under Section 29(2) of the Bombay Rent Act. Mr. K. V. Shelat, the learned advocate appearing for the petitioners has argued before me that the tenant has carried out certain repairs. The amount of cost incurred by the tenant was required to be adjusted and if that amount is adjusted,

there were no arrears of rent, which could have been recovered by the landlords. In his submission, therefore, the tenant was protected under Section 12(1) of the Bombay Rent Act as the tenant was ready and willing to pay the rent. After considering the aforesaid argument of Mr. Shetal, I find that there is no substance in the same. So far as the question about adjusting the so called amount of repairs are concerned, except bare words, the tenant has not led any evidence to show that any repairs were carried out by the tenant in the suit premises. The tenant has not given any notice to the landlords before carrying out any repairs in the suit premises. If, any such repairs were carried out, the tenant would not have missed to point out the same in response to the notice issued by the landlords. The theory put forward by the tenant about incurring the said cost, seems to be an after thought, for which no material is placed on record. No procedure as per Section 23 is followed by the tenant. I do not find any substance in the aforesaid argument of Mr. Shelat. At this stage a reference is required to be made to the provisions of Section 23 of the Bombay Rent Act. Act. Section 23 of the Bombay Rent Act provides as under :-

"Section 23 :- Landlord's duty to keep premises in good repair " (1) Not withstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlords ;

Provided that where the repairs are jointly made by the tenant the amount to be deducted or recovered by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs ;

[provided further that the amount so deducted or

recoverable in any year shall not exceed one-forth of the rent payable by the tenant for that year, excluding therefrom one-forth of the proportionate taxes in respect of his premisses payable to a local authority for that year .]

(3) For the purpose of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord].

There is therefore, no substance in the arguments of Mr. Shelat that the tenant is protected under Section 12(1) of the Bombay Rent Act and that the tenant is ready and willing to pay the rent.

6. It was next argued by Mr. Shelat, learned advocate appearing for the petitioners that since the dispute of standard rent was taken in the written statement by the petitioner- tenant, the case would fall under Section 12(3)(b) of the Bombay Rent Act and not under Section 12(3)(a) of the Bombay Rent Act. It is not in dispute that in response to the demand notice by the landlords, the tenant has not raised any dispute of standard rent in reply to the notice or even by substantive application of standard rent within one month from the receipt of the said notice. For the first time, the dispute of standard rent is taken in the written statement. So, it is not in dispute that the dispute of standard rent is not taken within one month of the receipt of the suit notice. Therefore, in the aforesaid circumstances, the case would fall under Section 12(3)(a) of the Bombay Rent Act and not under Section 12(3)(b) of the Bombay Rent Act. A reference is made to the decision of Supreme Court in case of ARUN KHIAMAL MAKHIJANI VS. JAMNADAS C. TULIANI & ORS. reported in 31(1) GLR Page-209. It has been provided in para - 6 of the said judgement as under :-

"Para - 6 :- It has been urged by the learned counsel for the tenants that November, 14 1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial Court on that day, the tenants had deposited the entire arrears of rent on January, 9 1968 within the time granted by the Court and continued to deposit the monthly rent thereafter they could not be treated as defaulters in

payment of rent even if the amendment made in sub-section (3) of Section 12 by the Amendment Act 18 of 1987 was ignored. We, however, find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand had been served on the tenants under sub-section (2) of section 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-section (3) of Section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-seciton (3) on the face of it was not attracted inasmuch as the said clause applied only to a case not covered by clause(a). This is amply borne out by the use of the opening words "In any other case" of clause (b). In Harbanslal Jagmohandas & Ands. V. Prabhudas Shivlal, 1977(1) SCC 576 these clause (a) and (b) of sub-section (3) of Section 12 of the Act came up for consideration and it was held that the tenant can claim protection form the operation of Section 12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was, therefore, inevitable. In Jaywant S. Kulkarni & Ors. Vs. Minochar Dosabhai Shroff & Ors., 1988 (4) SCC 108 clauses (a) and (b) of sub-sec (3) of Section 12 again came up for consideration. It was held :-

Sub-sec(3)(a) of Section 12 categorically provided that where the rent was payable by month and there was no dispute regarding the amount of standard rent or permitted increase, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-sec. (2), the Court shall pass a decree for

> eviction in any such suit for recovery of possession. In the instance case, as has been found by the court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The Court was bound to pass a decree for eviction in an such suit for recovery of possession. "

As stated earlier, no dispute of standard rent is taken within one month of receipt of the suit notice. The dispute was taken for the first time in the written statement. The aforesaid case would therefore, fall under Section 12(3)(a) of the Bombay Rent Act, and once the case falls under Section 12(3)(a), there is no escape from the decree for possession on the aforesaid ground. In view of the aforesaid, there is no substance in the arguments of Mr. Shelat that the case would fall under section 12(3)(b) of the Bombay Rent Act. In view of what is stated above, there is no substance in any of the points raised by Mr. Shelat and therefore, the Revision Application deserves to be dismissed.

7. At this stage, Mr. Shelat, learned advocate appearing for the petitioners has requested the Court to give reasonable time to the tenant for vacating the suit premises. It is argued by Mr. Shelat that the petitioner's financial condition is not sound and the premises in question is in a chawl and she has occupied small portion in the same. It was requested that three years time may be given to her for vacating the suit premises. Considering the facts that the petitioner will have to find out a suitable alternative accommodation and it is also true that in the city of Baroda, it is not easy to get accommodation within the short time. In view of the same, two years time is given to the petitioner for vacating the suit premises. The decree for possession not to be executed till 31.1.2002 on a condition that the petitioner shall file an usual undertaking before this court within six weeks from today. In the said undertaking it should be stated that the petitioner is in exclusive possession of the suit premises and without any obstruction in any manner, the peaceful possession will be handedover to the landlords on or before 31.1.2002. The petitioner will also continue to pay mesne profits at the rate of Rs.

10/every month till the possession is handed over to the respondents.

If, the aforesaid undertaking is not filed within stipulated time , it will be open for the respondents to execute decree for possession forthwith. Since the respondents are not appearing, the petitioners shall also submit a copy of undertaking to the landlords by way of Registered Post AD. If, there is any objection on the part of the respondents regarding granting of the aforesaid time, it will be open for them to apply to this Court for modification of the aforesaid condition, within a period of three months from today. If, no such application is filed, it may be presumed that they have no objection regarding the same.

Subject to what is stated above, the Revision Application is dismissed. Rule is discharged with no order as to costs.

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PALLAV.